85-2016

NO. _____

Supreme Court, U.S.
FILED
JUN 16 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

WAYNE T. OWENS, Petitioner

v.

THE BALTIMORE & OHIO R.R. CO., Respondent

ON WRIT OF CERTIORARI TO THE

COURT OF SPECIAL APPEALS OF MARYLAND

PETITION FOR A WRIT OF CERTIORARI

WAYNE T. OWENS
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INPROPER PERSON

SUPPLEMENT TO APPENDIX

OPINION & ORDER OF

COURT OF SPECIAL APPEALS OF MARYLAND

Article 4, section 16 (5) of the Baltimore City Code requires that charges of discrimination be filed with the Baltimore City Community Relations Commission within 180 days of the alleged unlawful practice. The sole issue to be decided in this case is whether the appellant, Wayne T. Owens, complied with the 180 day provision of the statute. Appellant and the Commission said he complied; the Circuit Court for Baltimore City (Levin, J.) said he did not. We agree with the trial court and affirm its dismissal of the case.

Appellant was employed by The Baltimore and Ohio Railroad Company in October, 1955, as an apprentice machinist. In July, 1962, he sustained serious physical injuries resulting from a motorcycle accident. The B & O then placed appellant on openened disability leave. In 1962 and again in 1966 appellant sought, and was denied, reinstatement. Twelve years later, in 1978 he filed his dicrimination suit with Community

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Relations Commission. For reasons that are unclear to us, the Commission did not hold a hearing until October, 1981, at which time it ordered that appellant be reinstated as of the time the first person was moved from the apprentice roster to the journeyman machinist roster after January 30, 1978. An additional two years elapsed until enforcement of the Commission's ruling was sought by Baltimore, City in December, 1983. Judge Levin dismissed the claim by Order dated February 13, 1985, citing in support thereof appellant's failure to file his claim within the 180 days set forth in the statute. This appeal followed.

We note that the right to file a complaint of alleged discrimination on account of physical disability did not arise until the actions of the B & O denying reinstatement in 1962 and 1966 were not prohibited and form no basis for a charge of a "continuing violation" as alleged by appellant. See United Air Lines v. Evans, 432 U.S. 553, 97 Sup. Ct. 1885, 52 L. Ed. 571 (197

In Evans, supra, a flight attendant was forced to resign her job in 1968 when she married.

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Evans, the attendant, did not initiate any discrimination charges within 90 days as required by the federal statute then in force. Rehired as a new employee in 1972, Evans later filed a complaint alleging that her filing was timely, because United's seniority system gave present effect to the past illegal act, thereby perpetuating the consequences of discrimination. Unpersauded by this reasoning, the Supreme Court stated:

> United was entitled to treat that past act as lawful after respondent failed to file a charge of discrimination within 90 days allowed by Section 706 (d). A discriminatory act which is not made the basis for a timely charge is the legal equivalent of a discriminatory act which occurred before the statute was passed.[1]

1. See also Hill v. At&T Technologies, Inc., 731 F. 2d 175 (4th Cir. 1984):
   It is only where an actual violation has occurred within that requisite time period (i.e., within the period of 180 days before the filing of a charge with the EEOC) that under any possible circumstances the theory of continuing violation is sustainable.

In the case sub judice, appellant's right complain about disability discrimination arose in 1976, the year Article IV was amended. He could have sought reinstatement at that time and, if refused, he could have filed his claim within 180 days of the decision to deny him reinstatement. Instead, he waited two years before lodging his complaint in 1978. His suit, as the trial court held, was not timely.

JUDGEMENT AFFIRMED
COST TO BE PAID BY
APPELLANT.